

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RONALD E. THOMPSON, }  
Plaintiff, }  
v. }  
STATE OF WASHINGTON, *et al.*, }  
Defendants. }  
No. C04-2554L  
ORDER GRANTING DEFENDANTS STATE  
OF WASHINGTON AND GARY LOCKE'S  
MOTION TO DISMISS

This matter comes before the Court on “Defendants State of Washington and Gary Lock’s Motion to Dismiss Pursuant to FRCP 12(b)(6).” Dkt. # 20. Defendants argue that all of plaintiff’s claims should be dismissed because (1) there are no facts alleged that could give rise to a viable claim against the state defendants and (2) the state defendants are immune from suit in federal court under the Eleventh Amendment of the United States Constitution. In the context of a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the Court’s review is generally limited to the contents of the complaint. Campanelli v. Bockrath, 100 F.3d 1476, 1479 (9th Cir. 1996). The allegations of the complaint are accepted as true and construed in the light most favorable to plaintiff. In re Syntex Corp. Sec. Litig., 95 F.3d 922, 925-26 (9th Cir. 1996); LSO, Ltd. v. Stroh, 205 F.3d 1146, 1150 n.2 (9th Cir. 2000). Only those claims for which it appears beyond

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1 doubt that plaintiff can prove no set of facts which would entitle him to relief should be  
 2 dismissed. Wyler Summit Partnership v. Turner Broadcasting Sys., Inc., 135 F.3d 658, 661 (9th  
 3 Cir. 1998).

4 Plaintiff alleges that defendants State of Washington and Gary Locke are liable for  
 5 various constitutional and statutory violations because they failed to prohibit abuses of process  
 6 in Pierce County District and Superior Courts. Plaintiff theorizes that Pierce County and the  
 7 Pierce County District and Superior Courts exist and act through powers delegated from the  
 8 State of Washington and its Governor, making the state defendants liable for the County's  
 9 conduct.<sup>1</sup> Having reviewed the memoranda submitted by the parties, the Court finds as follows:

10 (1) Plaintiff's claims against the state defendants fail because they cannot be held  
 11 responsible for the acts of their subordinate entities. Under 42 U.S.C. § 1983, a defendant will  
 12 be held liable only when his, her, or its conduct caused a constitutional tort. Christie v. Iopa,  
 13 176 F.3d 1231, 1234-35 (9th Cir. 1999). A government entity such as the state and its officers  
 14 cannot be held liable simply because their employees or agents have violated plaintiff's  
 15 constitutional rights. Webb v. Sloan, 330 F.3d 1158, 1163-64 (9th Cir. 2003). Rather, the  
 16 government entity may be held liable for constitutional violations only when they occur as a  
 17 result of the government's official "policy or custom." Monell v. New York City Dept. Soc.  
 18 Servs., 436 U.S. 658, 694 (1978). This rule ensures that municipalities are liable only for "acts  
 19 that are, properly speaking, acts 'of the municipality.'" Pembauer v. Cincinnati, 475 U.S. 469,  
 20 480 (1986).

21 Plaintiff has not alleged any discrete decisions or acts by either the State of  
 22 Washington or Gary Locke that could serve as "policymaking" by these defendants (Pembauer,  
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24           <sup>1</sup> Plaintiff does not assert that the state defendants or the County are employers subject to liability  
 25 under Title VII.

1 475 U.S. at 481), and the acts of subordinate entities, such as Pierce County and its courts, are  
 2 generally insufficient to create municipal liability under § 1983 (Monell, 436 U.S. at 694). Nor  
 3 has plaintiff alleged any facts which could suggest the existence of “widespread practices or  
 4 ‘evidence of repeated constitutional violations for which the errant municipal officers were not  
 5 discharged or reprimanded.’” Nadell v. Las Vegas Metro. Police Dept., 268 F.3d 924, 929 (9th  
 6 Cir. 2001). In such circumstances, there is no basis on which the State of Washington or its  
 7 chief executive officer could be held liable for any of the constitutional or statutory violations  
 8 alleged by plaintiff.

9       (2) The Eleventh Amendment to the United States Constitution provides that “[t]he  
 10 Judicial power of the United States shall not be construed to extend to any suit in law or equity,  
 11 commenced or prosecuted against one of the United States by Citizens of another State, or by  
 12 Citizens or Subjects of any Foreign State.” While the plain language of the Eleventh  
 13 Amendment does not expressly bar suits against a state by its own citizens, it is well established  
 14 constitutional law that “an unconsenting State is immune from suits brought in federal courts by  
 15 her own citizens as well as by citizens of another State.” Edelman v. Jordan, 415 U.S. 651, 663  
 16 (1974) (citing Hans v. Louisiana, 134 U.S. 1 (1890)). The Eleventh Amendment not only bars  
 17 suits for damages in federal court against the state, but also bars claims against state agencies  
 18 and officials insofar as such suits would actually run against the state treasury. Pennhurst State  
 19 Sch. & Hosp. v. Halderman, 465 U.S. 89, 101 (1984); Greater Los Angeles Council on Deafness  
 20 v. Zolin, 812 F.2d 1103, 1110 (9th Cir. 1987).

21       There are two exceptions to the Eleventh Amendment jurisdictional bar. First,  
 22 Congress may abrogate Eleventh Amendment immunity through an “unequivocal expression of  
 23 congressional intent to ‘overturn the constitutionally guaranteed immunity of the several States.’”  
 24 Pennhurst, 465 U.S. at 99. No such intent is expressed under either Section 1983 or Section  
 25 1985 of the Civil Rights Act of 1964. Although Congress has abrogated the states’ immunity

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1 from suit under Title VII, plaintiff has not alleged that he was ever employed by the state  
2 defendants and is not asserting a Title VII claim against these defendants. Second, the state may  
3 waive its Eleventh Amendment immunity by making an unequivocal expression of its consent to  
4 suit in federal court. Pennhurst, 465 U.S. at 99. Plaintiff has not identified, and the Court has  
5 not found, any legislative or judicial indication that the State of Washington has agreed to  
6 defend civil rights claims in federal court. See Soundgarden v. Eikenberry, 123 Wn.2d 750, 776  
7 (1994) (the State of Washington has not waived its immunity from § 1983 suits). Because  
8 neither of the exceptions to Eleventh Amendment immunity apply in this case, the Court does  
9 not have jurisdiction to hear plaintiff's claims against the State of Washington or its chief  
10 executive officer.

11  
12 For all of the foregoing reasons, the state defendants' motion to dismiss is  
13 GRANTED. Plaintiff's claims against the State of Washington and Gary Locke are hereby  
14 dismissed with prejudice.

15  
16 DATED this 11th day of July, 2005.  
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18   
19 Robert S. Lasnik  
20 United States District Judge  
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